

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOSEPH FOLEY and MELISSA FOLEY,
Individually and as Personal Representatives of
the Estate of JOSEPH PARKER FOLEY,

Plaintiffs,

v.

JOHN BLAKE and DUXBURY PUBLIC
SCHOOLS,

Defendants.

Civil Action No. 1:21-cv-10615-ADB

**JOINT MOTION TO REMAND TO THE MASSACHUSETTS
SUPERIOR COURT FOR PLYMOUTH COUNTY**

NOW COME the Parties, Joseph Foley and Melissa Foley, individually and as Personal Representatives of the Estate of Joseph Parker Foley (“Plaintiffs”), and John Blake (“Blake”), by and through their undersigned counsel and hereby jointly move this Court to remand this civil action to the Massachusetts Superior Court for Plymouth County. As grounds for this Motion, the Parties state the following:

1. On March 30, 2021, the Plaintiffs filed this civil action against Blake and the Duxbury Public Schools (“DPS”) in the Massachusetts Superior Court for Plymouth County (the “Civil Litigation”). See Plymouth County Superior Court Docket No. 2183CV00235.

2. The Plaintiffs allege, *inter alia*, that their deceased son, Joseph Parker Foley (“Parker”), was raped and sexually abused by his former gym teacher, Blake, while he was a student at the Duxbury Middle School.

3. On or about April 13, 2021, DPS removed the Civil Litigation to the United States District Court for the District of Massachusetts. See Docket Entry No. 1.

4. A trial date has not yet been set, and the Parties have not filed any substantive and procedural motions concerning the merits of the Civil Litigation with the district court.

5. On September 21, 2022, the Plaintiffs and DPS mediated this matter before The Honorable Nancy Holtz (Ret.), and they reached a settlement to dismiss DPS (but not Blake) as a defendant in the Civil Litigation. Blake was not included in the mediation, and he is expressly excluded from the terms of settlement between the Plaintiffs and DPS.

6. On November 21, 2022, DPS and the Plaintiffs filed a Stipulation of Partial Dismissal of Claims Against Defendant Duxbury Public Schools, thereby dismissing DPS as a defendant in suit. See Docket Entry No. 65.

7. Accordingly, the only remaining claims in this action are the Plaintiffs' six (6) claims against Blake.

8. The Plaintiffs and Blake wish to remand the Civil Litigation back to state court, to the Massachusetts Superior Court for Plymouth County, and they are accordingly jointly moving this Court to remand the Civil Litigation.

9. Pursuant to 28 U.S.C. § 1367(c), it would be proper to remand the Civil Litigation to state court, especially where the state law claims substantially predominate over the claims in which the district court has original jurisdiction. See also Wilbur v. Curtis, 872 F.3d 15, 23 (1st Cir. 2017) (noting that it would be “an abuse of discretion for a district court to retain jurisdiction over the remaining pendent state law claims unless doing so would serve ‘the interests of fairness, judicial economy, convenience, and comity.’”)

WHEREFORE, the Plaintiffs and Blake jointly move the Court to remand this case to the Massachusetts Superior Court for Plymouth County.

Respectfully Submitted,

JOSEPH FOLEY and MELISSA FOLEY,
Individually and as Personal Representatives
of the Estate of JOSEPH PARKER FOLEY,

By their counsel,

/s/ Jason W. Morgan
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Respectfully Submitted,

JOHN BLAKE,

By his counsel,

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CERTIFICATE OF SERVICE

I, Jason W. Morgan, hereby certify that, on November 21, 2022, I caused to be served a true and correct copy of the foregoing, *via* ECF filing, upon the following parties of record:

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/s/ Jason W. Morgan
Jason W. Morgan